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October 13, 1983

Mr. D. Donald McKitterick
Director of Operations
Office of the Governor
State House
Concord, New Hampshire 03301

Dear Mr. McKitterick:

By letter dated August 22, 1983, you requested our opinion on the inter-relationship of the Job Training Partnership Act (JTPA), Public Law 97-300 and RSA 282-A:31, III. Specifically, you asked:

1. Whether Section 302, subparagraph (D) of the Job Training Partnership Act supercedes RSA 282-A:31, III; and
2. If RSA 282-A:31, III takes precedence over the federal law, whether the Commissioner of Education is authorized to certify that anyone participating in training run by the Job Training Partnership Private Industry Council (PIC) is in approved training under JTPA.

As more fully explained below, it is our opinion that the JTPA does not supercede RSA 282-A:31, III and that training run by PIC can be considered a "vocational training program under the auspices of the New Hampshire department of education" as that phrase is used in RSA 282-A:31, III.

It is well settled that each state is free to enact its own legislation regarding unemployment compensation benefits. See Steward Machine Co. v. Davis, 301 U.S. 548 (1937); State of New Hampshire Department of Employment Security v. Marshall, 616 F.2d 240 (1st Cir. 1980). For this reason, neither the Job



Training Partnership Act nor the Federal Unemployment Tax Act (FUTA), which the Secretary of Labor has deemed to have been changed by the JTPA, supercedes RSA 282-A, the state unemployment act. However, you should be aware that the State could suffer severe economic consequences if the minimum requirement set out at Section 3304(a)(8) of FUTA, as interpreted by Unemployment Insurance Program Letter No. 32-83, is not met.

As you may know, unemployment insurance in this nation is a joint federal-state program. The federal government establishes minimum standards which the states must comply with to be eligible to receive federal administrative grants to run the state unemployment program and to allow employers in a state to be eligible for federal tax credits. As a practical matter, all states comply with these minimum requirements in order to take advantage of the financial inducements.

In Unemployment Insurance Program Letter No. 32-83, the Secretary of Labor has interpreted Section 302 of the JTPA to add a further requirement to Section 3304(a)(8) of FUTA which states:

"(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)."

For purposes of this section, the Secretary of Labor has interpreted that anyone who is in approved training under the JTPA shall be deemed to be in training with the approval of the State agency. If New Hampshire wishes to remain certified, and thus eligible for federal administrative grants and tax credits, the interpretation and application of RSA 282-A:31, III must substantially comply with the Secretary's interpretation. Thus, although federal law does not supercede state law in this area, all states meet the federal minimum requirements in order to receive federal funds.

Since federal law does not take precedence over state law, RSA 282-A:31, III is controlling. RSA 282-A is remedial in nature and should be construed liberally in favor of those it was intended to benefit. See generally C.J.S. 2d, Statutes §387. The New Hampshire Supreme Court has said that the purpose of our unemployment compensation statute is to prevent the spread of unemployment and to lighten the burden on those workers who are involuntary unemployed through no fault of their own. Additionally, the Court has recognized the broad statutory goal

of providing assistance to workers. See Appeal of Patrick Boudreault, 123 N.H. ____ (decided May 9, 1983).

RSA 282-A:31, III provides that an individual, if otherwise eligible, shall be entitled to receive unemployment benefits if enrolled in a "vocational training program under the auspices of the New Hampshire Department of Education." Since the language of that phrase is broad, and, taking into account the broad statutory goal of assisting workers, it appears that certification by the Commissioner of Education of training run by the PIC would fulfill the purpose of the statute.

Additionally, because of the consequences which could result if New Hampshire does not meet the requirement set out at Section 3304(a)(8) of FUTA, it is also our opinion that the Commissioner of the Department of Employment Security has the authority to make the necessary revisions in the procedures followed by the Department pursuant to RSA 282-A:31, to bring the statute into conformity with the minimum requirements of federal law. See RSA 282-A:175.

I trust that this satisfactorily addresses the questions you posed in your letter of August 22, 1983. Please do not hesitate to call on us if you wish to discuss these matters further, or if any questions arise concerning our views.

Very truly yours,



Bruce E. Mohl
Assistant Attorney General
Division of Legal Counsel

BEM:DJM:vv

cc: Dr. Robert Brunnell

Commissioner of Education

Mr. Benjamin C. Adams

Commissioner of Employment Security